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IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON

No. 958⁹3

BETWEEN:

CHURCH OF SCIENTOLOGY MISSION OF EDMONTON, CHURCH OF
SCIENTOLOGY MISSION OF CALGARY, AND CHURCH OF SCIENTOLOGY
MISSION OF OLD STRATHCONA,

Plaintiffs

- and -

EVELYN HAMDON, LES JACKMAN, LORNA LEVETT, BETTY McCOY,
BRENDON MOORE, WILLIAM REID, NEOL TAYLOR, and DAVID
WALLACE,

Defendants

ORAL JUDGMENT

of The Honourable Mr. Justice Agrios

THE COURT:

I am cognizant of the well established rule that one must be extremely cautious in departing from the general rule that costs to be awarded to a successful litigant are to be taxed as between party and party on the basis of an authoritative and well recognized tariff.

Having reviewed the history of these proceedings, I am of the view that the case at bar is

the rare and exceptional case in which costs should be awarded on a solicitor/client basis rather than on a party/party basis.

Counsel for the Plaintiffs has referred to two recent decisions of our Court, firstly by Chief Justice Sinclair in McCarthy vs Board of Trustees of Calgary Roman Catholic Separate School District No. 1, and secondly by Mr. Justice Kirby, in Mobil Oil Canada v Canadian Superior Oil.

The general principles are recited in both decisions. Both of these cases went to trial and it was held that the difficulty and complexity of the proceedings is not of itself a reason for departing from the general rule. However, in the case at bar, the issue will never be tried. It is apparent that throughout the proceedings the Defendants and not the Plaintiffs were endeavouring to have the trial heard.

I need not repeat the entire and rather remarkable history of this case. The record submitted by counsel for the Defendants speaks for itself. The contempt of court, the failure to comply with innumerable court orders, the need to formally settle minutes of appeal; the entire conduct of the Plaintiffs is not one that should be countenanced by our courts.

In my view, the proceedings and the action of the Plaintiffs amounted to a clear abuse of process and accordingly, I award costs on a solicitor/client basis to the Defendants in the sum of \$60,500 plus additional costs of this Applicant to be calculated in the same fashion as

the prior account submitted by the Defendants' solicitors to their clients.

Counsel for the Plaintiffs in a very persuasive manner suggested it would be more appropriate to award cost on a party/party basis using a multiple of column five of schedule C of our Rules of Court. I can not, with respect, agree with this submission.

I did suggest that on the basis on a number of Ontario cases set out in the Defendants' counsels' brief, and particularly as noted in the case of McGee vs the Ottawa Separate School Board, that there may be a distinction as to solicitor/client costs where there is evidence that they are being paid by a third party. It is not clear to me that such a distinction is appropriate in Alberta, however, counsel for the Plaintiff indicated in his view any such distinction would not apply in this case.

DELIVERED at Edmonton, Alberta,
the 6th day of October, A.D. 1980.

Mr. D.A. McGillivray
For the Plaintiffs,

Mr. C.D. Evans
Mr. K.E. Staroszik, and
Mr. H. Joffe
For the Defendants.

D. Johnson
kw/2

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
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BETWEEN:

CHURCH OF SCIENTOLOGY MISSION OF EDMONTON,
CHURCH OF SCIENTOLOGY MISSION OF CALGARY,
and CHURCH OF SCIENTOLOGY MISSION OF OLD
STRATHCONA

by certify to be a true copy of
original
it appears to be a copy and
this day of 1980.

Respondents
(Plaintiffs)

- and -

for Clerk of the Court

EVELYN HAMDON, LPS JACKMAN, LORNA LEVETT,
BETTY McCOY, BRENDON MOORE, WILLIAM REID,
NEIL TAYLOR and DAVID WALLACE

Applicants
(Defendants)

BEFORE THE HONOURABLE)	At the Court House, in the City of
)	
MR. JUSTICE J. AGRIOS)	Edmonton, in the Province of Alberta,
)	
IN COURT ON OCTOBER 6TH,)	on Monday, the 6th day of October,
)	
1980 AND IN PRIVATE)	1980 and on Tuesday, the 21st day
)	
CHAMBERS ON OCTOBER 21ST,)	of October, 1980.
)	
1980.)	

ORDER

UPON THE APPLICATION of the Applicants (Defendants)
for an Order to determine the quantum of costs in this action;
AND UPON HEARING counsel for the Applicants (Defendants); AND
UPON HEARING counsel for the Respondents (Plaintiffs);

IT IS HEREBY ORDERED THAT


1. The Court has jurisdiction to hear the application.
2. The Applicants (Defendants) are not entitled to call viva voce evidence.

3. The Applicants (Defendants) are entitled to the costs of this action as determined on the scale of solicitor/client.

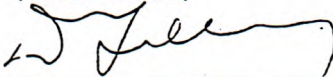
4. The solicitor and client costs for the Defendants LORNA LEVETT, BETTY McCOY, BRENDON MOORE, WILLIAM REID, NEIL TAYLOR, DAVID WALLACE and LES JACKMAN are in the sum of \$60,500.00.

AND UPON IT APPEARING that the Defendant LES JACKMAN had settled his pro rata share of the application for costs prior to the said hearings, solicitor/client costs in the sum of \$60,500.00 are reduced by 1/7th and are hereby set in favour of the Defendants LORNA LEVETT, BETTY McCOY, BRENDON MOORE, WILLIAM REID, NEIL TAYLOR and DAVID WALLACE in the lump sum of \$51,857.15.

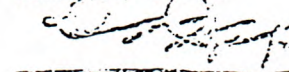
5. The Applicants (Defendants) shall have the costs of this application calculated on a solicitor/client basis.

M.A. GRACOWSKI 
Clerk of the Court of Queen's
Bench of Alberta

Approved as being the Order granted
Solicitors for the Respondents
(Plaintiffs)



Entered this 27 day of
October, 1986.


Clerk of the Court